IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATE OF PRONOUNCEMENT : MAY 29, 1998

BEFORE

THE HON'BLE MR. JUSTICE G.N. MALLIKARJUNA

H.R.R.P.No.192/1992

BETWEEN:

Sri. Govindaraj S/o Kandaswamy
Reddy, major, R/at No.U-1,
Nagendra Garden,
Srirampuram,
Bangalore-560 021. .. PETITIONER

(By Advocate Sri. M.T.Nanaiah)

AND:

Sri. H.Manjunatha Raghavendra
Tea House, U-1, Nagendra
Garden, Srirampuram Main
Road, Bangalore-560 021 .. RESPONDENT

(By Advocate Sri. K.N.Laxminarasimhiah)

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This petition is filed under Sec.50(1) of the Karnataka Rent Control Act against the order dated 5.9.1991 passed in HRC No.1510/86, on the file of the XVII Addl. Small Causes Judge, Bangalore City, dismissing the petition filed under Sec.21(1)(a) and (h) of the Act.

This petition coming on for hearing, having reserved for orders, made the following:

O R D E R

In this revision under Sec.50(1) of the Karnataka Rent Control Act,1961, the un-successful land-lord in eviction proceedings

in respect of commercial premises measuring 12'x14', a portion of the whole building situated in Main Road, Nagendra Garden, Srirampuram, Bangalore City calls in question the legality and correctness of the order dated September 5,1991 in H.R.C.1510/1986 dismissing his application under Sec.21(1)(a) and (h) of the Karnataka Rent Control Act ('The Act' for short). Tenant is the respondent. Hereinafter parties would be referred to as petitioner and respondent for the purpose of convenience.

2. It is un-disputed that the respondent is in occupation of the disputed premises as a tenant for over 15 years and he is running a tea stall in the said premises. There are 5 residential premises and 3 non-residential premises in the whole of the building. Three non-residential premises adjoins the main road. Western portion is leased to one Mr. Naidu and he is running a military hotel, eastern side is leased to one another person who is running a wine shop and the middle portion is the disputed portion in occupation of the respondent. Ex.P-4 is the plan of the whole of the building. It

would appear that the respondent occupied the pre[illegible]00 [illegible] the request of the respondent hind portion was also made available to him on an additional monthly rent of Rs.100-00. It is ~~in~~ no longer in dispute that respondent vacated that additional accommodation a few years later, but however continued to pay a monthly rent of Rs.200-00 only for the shop premises.

Land-lord's case is that the respondent became due in a sum of Rs.3400-00 being the arrears of rent for the period from 13.1.1985 to 30.5.86. Therefore, he got issued the notice dated 5.4 1986 calling upon the respondent to pay or deposit the said arrears of rent within two months. On receiving the notice, respondent sent the reply Ex.P-3 dated 21.5.1986 denying that he is in arrears and further denying his liability to pay. Land-lord also pleaded that he requires the leased premises for his personal use and occupaton, for settling his second son who is un-employed in independent business. What type of business his son intended to do is not spelt out in the notice Ex.P-1. In view of the reply by the respondent denying the alleged requirement

on 24.6.1986 petitioner filed eviction petition under Sec.21(1)(j) for eviction of the respondent. In the petition, petitioner contended that his second son Meghanath who failed in S.S.L.C. is an unemployed and therefore the disputed premises is required for settling him in business viz., in establishing milk dairy.

3. Respondent resisted the petition contending inter-alia that at no point of time he kept the rent in arrears. In fact, while additional accommodation was provided, a sum of Rs.6000-00 was paid as advance and that continues to be with the land-lord. Even though he vacated the additional accommodation made available to him, rent continued to be Rs.200-00 a month and he has made payment regularly and promptly and the only rent that was due was for the month of April,1986. Respondent also contended that after filing the petition petitioner dis-connected the supply of electrical energy and also water supply and therefore he made a complaint to the police but of no avail. The whole story of requirement is a concoction. In fact, son is carrying on

milk business in his own house which is part of the whole building. Moreover, the business in vending milk is confined only for few hours in the day and as that business is being continued for over a year, the alleged requirement is false and concoction only to evict him. He further pleaded that he will be put to great hardship and difficulty in the event of decree of eviction.

4. At the trial, petitioner examined himself and his second son Meghanath (P.Ws-1 & 2) and closed the case by producing documents Exs.P-1 to 4. Respondent examined himself and produced documents Exs.R-1 & 2. The learned trial Judge after hearing both the counsel and after discussing elaborately both oral and documentary evidence negatived the case of the petitioner and further held that if the decree for eviction is passed, greater hardship would be caused to the respondent who has no other business or alternate accommodation. Aggrieved by the order, present revision is filed.

5. Heard the learned counsel for both the parties. Learned counsel for the petitioner vehemently contended that the court erred in rejecting whole of the evidence of the petitioner and accepting the un-corroborated evidence of the respondent. Second son who is presently employed temporarily is required to be settled in life and therefore petitioner requires the premises in occupation of the tenant for settling his son as that premises is the only suitable premises for the purpose of milk vending. He also contended that the court erred in drawing inference and concluding that there is no arrears of rent. In fact, whatever arrears that were paid only during HRC proceedings and therefore petitioner is entitled to an order of eviction both under Sec.21(1)(a) and (h) of the Act.

Respondent's counsel countered the arguments by contending that the evidence is wholly discrepant and not acceptable to conclude that the alleged requirement is both reasonable and bonafide, there is no arrears of rent and in fact a suitable reply has been given pursuant to the notice as required under Sec.21(1)(a) of the Act, greater hardship would be caused to the

tenant if eviction is ordered and further contended that there are absolutely no [illegible] to interfere that, the impugned order which is wasteful on proper appreciation of evidence both oral and documentary.

Learned counsel read to me the whole evidence recorded in the case.

6. On a careful consideration of the rival contentions urged and the material on record, I hardly find any grounds to interfere with the findings of the trial court. The learned Judge in fact has considered the evidence meticulously and by a well-reasoned judgment has rightly negatived the contentions urged on behalf of the petitioner. The land-lord would be entitled to eviction on the ground available to him under Sec.21(1)(a) of the act if only he establishes by satisfactory evidence that there were arrears of rent and the tenant has neither paid nor tendered whole of the arrears of the rent legally recoverable within two months from the date on which the notice for payment of arrears of rent is received. In the instant case, as rightly

pointed out by the learned trial Judge that there is no acceptable evidence to hold that on the date of notice viz., 1.4.1986 respondent was in arrears of Rs.3400-00. Admittedly, whole of the building consists of both residential and non-residential premises. It has come in evidence of the petitioner that non-residential premises and some of the residential premises are in occupation of the tenants and he has not maintained any accounts and his evidence in regard to the arrears is based on his memory. But his evidence does not clearly make out that on 5.4.1986 respondent had kept the arrears of rent amounting to Rs.3400-00 being the rent for the last 17 months. No other evidence is placed nor anything is brought out in the cross-examination of the respondent to suggest that he was irregular in the matter of payment of rent and if not Rs.3400-00 atleast some amount as arrears on the date of notice. There is neither acceptable evidence to hold that the respondent failed to make payment of that arrears of rent that was due within two months from the date of receipt of the notice Ex.P-1. On the other hand, what emerges from the evidence on record is that

the respondent was regular in the matter of payment of rent and in fact whatever that was in arrears was paid and at the time of trial there was no arrears of rent. On another circumstance that emerges from the evidence also disproves the case of the petitioner that the respondent was in arrears of rent at any time much less certain amount prior to the issue of notice ex.P1 petitioner makes an application under Sec.29(2) of the Act and gets it dismissed. Subsequently, As I have said earlier, petitioner would succeed under Sec.21(1)(a) if only he establishes by acceptable evidence that certain amount was due as arrears of rent and that the respondent tenant failed to make payment within two months from the date of receipt of notice. I therefore, find no ground to interfere with the findings of the trial court in this behalf

7. It is a settled law that a mere wish or desire of the land-lord is not enough to satisfy the ground available under Sec.21(1)(h) of the Act. The need of the land-lord must be established by acceptable evidence. A desire or the wish must be followed by absolute need. The

need must be genuine and if that alleged need is established by acceptable evidence, then the desire in which could be concluded as just and reasonable. Therefore, what is required for the court to examine is whether the alleged need is genuine and bonafide and that is established by the land-lord by acceptable evidence. Therefore, each case will have to be examined on its own facts and circumstances and the court is required to determine as to whether those facts and circumstances placed on record establish genuine need in this context. I find no need to refer to one or two decisions relied on by the learned counsel for the petitioner in this behalf. We will have to see whether the evidence placed on record by the land-lord establishes the alleged need and if only that is established then the court can conclude that the requirement pleaded is both reasonable and bonafide. Further, it may also be said that even if the alleged requirement is fair and not capricious nor absurd, it can be said that the requirement is reasonable and not otherwise.

8. In the instant case, petitioner has examined himself and his son to establish the alleged need. In Ex.P-1 it is not clearly spelt out as to what was the nature of business intended to be commenced in the disputed premises. It is only stated that his unemployed son is required to be put any independent business. It is only in the petition it is stated that the second son of the petitioner Meganath (PW-2) is unemployed, having failed in S.S.L.C. and is required to be settled in business and the business intended was milk dairy business. A close scrutiny of the evidence of PWs-1 & 2 clearly establishes that the business in dairy nor in milk vending was not a new business for the petitioner. In fact, he is engaged in business for over years and doing the milk vending in one of the portions in which they live in portion of the building. It is also clear from the evidence of both father and son that petitioner is rearing cattle for over 30 years and in the beginning he had 15 cows and at present he had no cows. Ex.P-4 is the plan. The area behind the commercial premises is shown as open field. Both father and son have stated in

their evidence that they use to tether their cows in the open site and carry on the milk vending business in the disputed premises. But in the cross-examination PW-2 admits that there is no vacant space in the schedule premises and the whole area is covered by construction. Further the evidence of PW 2 also makes out that even from his child-hood and thereafter he assisted his father in vending the milk. However, it is clear from the evidence of PWs-1 & 2 that they purchased milk from outside, having stopped maintaining cows and portion of it is sold near the premises and rest by distributing to the houses. It is also clear from the evidence of these two witnesses that vending is confined to certain hours both the morning and in the evening and not throughout the day. It is also come in the evidence of PWs-1 & 2 that PW-2 was married on 29.11.1990 viz., during the pendency of the case and further it is clear from their evidence that son PW-2 is working in a private firm i.e., in United Transport Company on a monthly salary of Rs 750-00. PW-2 states that it is a temporary job and there are no chances of making the job permanent and therefore he intends getting in

business. What they intend doing is vending milk which the whole family is doing for over a decade or two. When that is the position, it is rather difficult to accept that second son was totally unemployed and that the father intended to settle his unemployed son in an independent business of milk vending. It is not their case as could be seen from the notice Ex.P-1 and the petition, that the income they get both by way of rent and milk vending is insufficient and therefore desired to expand their business of milk vending for augmenting or supplementing their income. The learned Judge after considering the evidence of both PWs 1 & 2 elaborately, recorded a finding that the alleged need is not satisfactorily established. On reappraisal of the evidence and particularly the evidence of PW 1, I do not find any substantial or even reasonable ground to interfere with the findings of the trial court. In fact, PW-2 states that they gave up maintaining cows about 12 years ago and that they continue to do the business of milk vending, they have not experienced any difficulty for the last 10 to 12 years. Further, he states that if

they intend purchasing, whether they will have to put up a separate shed or that they have to hire out separate place. PW-2 admits that there is no vacant place in the whole of the site as shown in the sketch Ex.P-4. The relevant portion of the evidence of PW-2 reads thus:

"ನಾನು ಹಸುಗಳನ್ನು ಕೊಂಡುಕೊಂಡರೆ ಅವುಗಳನ್ನು ಕಟ್ಟಲು ಬೇರೆ ಷೆಡ್ ಹಾಕಬೇಕು ಅಥವಾ ಬೇರೆ ಜಾಗವನ್ನು ತೆಗೆದುಕೊಳ್ಳಬೇಕು ಏನನ್ನುತ್ತದು ನಿಜ. ಕ್ಷಣದಲ್ಲಿ ತೋರಿಸಿರುವ ಕಟ್ಟಡದಲ್ಲಿ ಸಿಗದೆ ಹಸುಗಳನ್ನು ಕಟ್ಟಿ ಸಾಕಿದ್ದೀನಿ, ಅದನ್ನು ಬಿಟ್ಟು ಈಗ್ಗೆ ಸುಮಾರು 15 ವರ್ಷ ಆಗಿರಬಹುದು. ಹಸುಗಳನ್ನು ಬೆಳಿಗ್ಗೆ ಹಾಲನ್ನು 4 ಗಂಟೆಗೆ ಹೋಗಿ ತೆಗೆದು ಕೊಂಡು ಬಂದರೆ 6 ಗಂಟೆಯಿಂದ 9 ಗಂಟೆಯವರೆಗೆ ಹಾಲಿನ ವ್ಯಾಪಾರ ಮಾಡುತ್ತೇನೆ. ಸಾಯಂಕಾಲ ಹಾಲನ್ನು 1 ರಿಂದ 5 ಗಂಟೆಯವರೆಗೆ ವ್ಯಾಪಾರ ಮಾಡುತ್ತೇನೆ. ನನ್ನ ತಂಗೆಯವರು ಹಸುಗಳನ್ನು ಮಾರಿದ ಮೇಲೆ ಇದೇ ಜಾಗದಲ್ಲಿ ನಾನು ಹೇಳಿದಂತೆ ಹಾಲಿನ ವ್ಯಾಪಾರ ಮಾಡುತ್ತಾ ಇದ್ದೇನೆ. ಹಾಲಿನ ವ್ಯಾಪಾರ ಮಾಡಲು ಈಗ 10-15 ವರ್ಷಗಳಿಂದ ನನಗೆ ಯಾವುದೇ ತೊಂದರೆಯಾಗುತ್ತಿಲ್ಲ."

Learned trial Judge has considered every aspect of the matter and duly from records the finding that there is no truth in the alleged need and the petition is filed only with an oblique motive of evicting the respondent. One

another circumstance also supports the view in the matter. It is undisputed that petitioner is connected to water supply and electrical energy without permits or any reason and that has not been rectified even after the intervention of the police. Petitioner sought to evict on under sec.2(1)(h) of the Act on the ground that he intends to settle his unemployed son in the business. But the evidence on record is otherwise and discloses that whole of the family including that son were engaged in the business of milk vending and continue to do so without any difficulty and further the second son is gainfully employed in the service. Though it is stated that it is temporary in nature, it is not known that he is thrown out of the job, if not earlier at least during the pendency of this revision petition. In these circumstances, I find no grounds to fault the findings of the trial court.

9. The trial court has also considered the question of relative hardship and held that if eviction is ordered, it would cause greater hardship and inconvenience to the tenant. It is undisputed that the respondent started business

in the premises somewhere in the year 1975 and continues to carry on the same business. In fact, on request made by the ~~landlord~~ Tenant & landlord, other portion was also made available but subsequently without a murmur tenant vacated that additional accommodation and continued to confine his business only in the disputed area.

Petitioner is from a place called Kundapura away from Bangalore and runs a tea shop in the disputed premises. PW-2 second son of the petitioner concedes in evidence that if the respondent is evicted, he would be put to greater inconvenience and hardship. The relevant portion of the evidence reads thus:

"ಪ್ರತಿವಾದಿಗೆ ಬೇರೆ ಅಂಗಡಿ ಮುತ್ತು ಮನೆ ಇದೆಯೋ, ಇಲ್ಲವೋ ಎಂಬ ಬಗ್ಗೆ ನಾನು ವಿಚಾರ ಮಾಡಿರುವುದಿಲ್ಲ, ಪ್ರತಿವಾದಿಯವರು ಹೊರಗಡೆಯಿಂದ ಬಂದು ಟೀ ಅಂಗಡಿ ಇಟ್ಟು ವ್ಯಾಪಾರ ಮಾಡುತ್ತಿರುವುದರಿಂದ ಅವರನ್ನು ಬಿಡಿಸಿದರೆ ಅವರಿಗೆ ತೊಂದರೆ ಯಾಗುತ್ತದೆ ಎನ್ನುವುದು ನಿಜ. ನಾನು ಸ್ಥಳೀಕನಾಗಿದ್ದು ಅಂಗಡಿಗಳನ್ನು ಬಾಡಿಗೆಗೆ ಕೊಟ್ಟು ಹಾಲಿನ ವ್ಯಾಪಾರ ಮಾಡುತ್ತಿದ್ದುದರಿಂದ ಪ್ರತಿವಾದಿಯವನ್ನು ಬಿಡಿಸದೇ ಇದ್ದಲ್ಲಿ ನನಗೆ ತೊಂದರೆಯಾಗುವುದಿಲ್ಲ ಎಂದು ಹೇಳುವುದು ಸುಳ್ಳು".

On the other hand, what emerges from the evidence of PW-1 & 2 is that they are carrying on business of milk vending for over two decades in

the very premises both by selling near their house and by distributing it to others in the locality. In the circumstances, trial court was right in holding that in the event of the decree for eviction, respondent would be put to greater hardship.

10. Having regard to the size of the building in question and the fact that petitioner is residing just behind the house and also the fact that petitioner is carrying on the business which they do not intend to expand, partial eviction is neither practical nor feasible. Hence petitioner fails.

11. In the result and for the reasons hereinabove stated, this revision petition is dismissed and in the peculiar circumstances of the case I direct each parties to bear their own costs.

Sd/-
JUDGE